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INTERSTATE COMMERCE COMMISSION

Lease of Railroad Equipment

Dated as of February 4, 1971

BETWEEN

BANKERS TRUST COMPANY

As Trustee

AND

UNION CARBIDE CORPORATION

As Lessee

Railroad Equipment
(U. C. Trust No. 3)

LEASE OF RAILROAD EQUIPMENT

Re: UNION CARBIDE CORPORATION

(U. C. Trust No. 3)

THIS LEASE OF RAILROAD EQUIPMENT dated as of February 4, 1971 between BANKERS TRUST COMPANY, a New York banking corporation, as trustee (the "Lessor") under a Trust Agreement dated as of February 4, 1971 and annexed hereto as Exhibit 2 (the "Trust Agreement"), and UNION CARBIDE CORPORATION, a New York corporation (the "Lessee");

WITNESSETH :

SECTION 1. *Manufacture and Delivery of Equipment.*

1.1. *Intent to Lease and Hire.* The Lessor is acquiring certain equipment (collectively the "Equipment" and individually "Item of Equipment") described in Schedule 1 attached hereto and made a part hereof and, upon delivery of each Item of Equipment by the Manufacturer or Manufacturers thereof (collectively the "Manufacturers" and individually "Manufacturer") to the Lessee at the direction of the Lessor, the Lessor shall lease and let such Item of Equipment to the Lessee and the Lessee shall hire such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth.

1.2. *Inspection and Acceptance.* Upon delivery of each Item of Equipment by the Manufacturer thereof to the Lessee, the Lessee will inspect such Item of Equipment and if such Item of Equipment tendered for delivery appears to meet the specifications the Lessee will accept delivery thereof and execute and deliver to such Manufacturer and Lessor duplicate Certificates of Acceptance, substantially in the form of Exhibit 1 attached hereto and made a part hereof.

1.3. *Certificate of Acceptance.* The Lessee's execution and delivery to the Lessor of the Certificates of Acceptance with respect to each Item of Equipment shall conclusively establish as between the Lessor and the Lessee, but without prejudice to any rights either party may have against the Manufacturer, that each Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that each Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable Interstate Commerce Com-

mission and/or the United States Department of Transportation requirements and specifications, if any. The Lessee represents that it has no knowledge of any such defect.

SECTION 2. *Rents and Payment Dates.*

2.1. *Rent for Equipment.* The Lessee agrees to pay the Lessor for each Item of Equipment designated in Schedule 1 hereto and leased hereunder, fifty consecutive semi-annual installments of Periodic Rent each payable in advance in New York Clearing House funds and each in the amount of 4.1850% of the original cost to the Lessor of such Item.

2.2. *Rent Payment Dates.* For each Item of Equipment delivered and accepted between the date hereof and March 22, 1971, inclusive, rent shall be paid on March 31 and September 30 in each year, commencing on March 31, 1971, for each Item of Equipment delivered and accepted between March 23, 1971 and July 7, 1971, inclusive, rent shall be paid on July 15 and January 15 in each year, commencing on July 15, 1971, for each Item of Equipment delivered and accepted between July 8, 1971 and October 7, 1971, inclusive, rent shall be paid on October 15 and April 15 in each year, commencing on October 15, 1971 and for each Item of Equipment delivered and accepted between October 8, 1971 and January 15, 1972, inclusive, rent shall be paid on January 15 and July 15 in each year, commencing on January 15, 1972. Such payment dates are hereinafter referred to as the "Rent Payment Dates".

2.3. *Place of Rent Payment.* All payments provided for in this Lease to be made to the Lessor shall be made to the Lessor at its office at 16 Wall Street, New York, New York 10015, or at such other place as the Lessor, or its assigns pursuant to Section 16 hereof, shall specify in writing.

2.4. *Net Lease.* This Lease is a net lease and the Lessee's obligation to pay all rent payable hereunder shall be absolute and unconditional under any and all circumstances and shall not be affected by any circumstance of any character, including, without limitation (i) any set-off, counterclaim, recoupment, defense and other right which the Lessee may have against the Lessor, any Manufacturer or anyone else for any reason whatsoever, (ii) any defect in the title, condition, design, operation or fitness for use of any Item of Equipment, (iii) any loss or destruction of, or damage to, or interference with, any Item of Equipment or interruption or cessation in the use or possession thereof by the Lessee for any reason whatsoever and of whatever duration, (iv) any lawful prohibition of the Lessee's use of the Equipment, (v) any insolvency, bankruptcy, reorganization or similar proceeding by or against the Lessee, (vi) the invalidity or unenforceability or lack of due authorization

or other infirmity of this Lease, or lack of right, power, or authority of the Lessor to enter into this Lease or (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing. The Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise except as specifically provided herein, the Lessee nonetheless agrees to pay to the Lessor an amount equal to each rent payment at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Each rent payment made by the Lessee shall be final and the Lessee will not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

SECTION 3. *Term of the Lease.*

The term of this Lease as to each Item of Equipment shall begin on the date of delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Section 11 hereof, shall terminate 25 years after the initial Rent Payment Date for such Item of Equipment provided for in Section 2.2 hereof.

SECTION 4. *Ownership and Marking of the Equipment.*

4.1. *Retention of Title.* The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and the possession and use thereof by the Lessee.

4.2. *Duty to Number and Mark Equipment.* The Lessee will cause each Item of Equipment to be kept numbered with the car number as set forth in Schedule 1 and to be kept plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one-half inch in height as follows:

“Leased to Union Carbide Corporation by Bankers Trust Company, as Owner-Trustee, and Subject to a Security Interest Recorded with the I.C.C.”

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required

legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the car number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new car numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3. *Prohibition Against Certain Designations.* Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia of the Lessee and/or its divisions and affiliates for the purpose of identifying the right of Lessee to use the Equipment under this Lease, and provided further, that Lessee may make further designations by stencilling, placarding or lettering on the Equipment as may be from time to time required by so-called trip sub-leases to Lessee's vendors, customers or consignees of goods being shipped.

4.4. *Indemnification for Improper Marking.* The Lessee shall indemnify the Lessor, Industrial Leasing Corporation, a Rhode Island corporation and the Settlor under the Trust Agreement (the "Settlor"), and any assignee under Section 16 hereof against any liability, loss or expense incurred by any of them as a result of the aforesaid marking of the Equipment with such name, initials or insignia, except expenses incurred in removing same at the termination of this Lease.

SECTION 5. *Disclaimer of Warranties.*

AS BETWEEN LESSOR AND LESSEE, LESSOR LEASES THE EQUIPMENT *As-Is* WITHOUT WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OR OMISSIONS OF THE LESSOR OR THE SETTLOR), OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee as its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as

owner of the Equipment against any party whomsoever, including, but not limited to, manufacturers or contractors in respect of the Equipment. The costs and expenses incurred by the Lessee, including attorneys' fees, in connection with any recovery, shall first be deducted from such recovery, and the balance, if any, shall be distributed between the Lessor and the Lessee, as their interests may appear.

SECTION 6. *Lessee's Indemnity.*

6.1. *Scope of Indemnity.* The Lessee shall defend, indemnify and save harmless the Lessor, the Lender (as defined in Section 14.1(d) hereof) and the Settlor and their successors and assigns from and against

(a) any and all loss or damage of or to the Equipment, usual wear and tear excepted, and

(b) any claim, cause of action, damages, liability, cost or expense (including counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to the Equipment or any part thereof, including without limitation the construction, purchase, delivery, installation, ownership, sale, leasing, subleasing or return of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (ii) by reason or as the result of any act or omission of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent infringements, or (iv) in connection with the remittance by the Lessor of Mileage as defined in Section 17.2 hereof.

6.2. *Continuation of Indemnities and Assumptions.* The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumption of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i) or (ii) of subsection (b) of Section 6.1 hereof occurring after the termination of this Lease, except for any such matters occurring after the termination which arise in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or, as the case may be, Section 15 hereof. The foregoing does not guaranty a residual value. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

6.3. *Exceptions to Indemnity.* Notwithstanding anything in this Lease to the contrary, Lessee shall in no case pay, reimburse or become liable to the

Lessor, the Lender and/or the Settlor and/or their respective successors, assigns, directors, officers and agents for any loss, claim, liabilities and expenses arising out of or related to (i) out-of-pocket expenses, including counsel fees incurred by the Lessor, the Lender and/or the Settlor in connection with the negotiation, preparation and execution of this Lease; (ii) any income taxes, local and state franchise taxes, or any other taxes on or measured by net income unless otherwise assumed by the Lessee under Section 10.2 hereof; (iii) the fault or negligence of the Lessor, the Lender and/or the Settlor or their respective successors, assigns, officers, directors and agents; or (iv) breach by the Lessor, the Lender and/or the Settlor of any contract, agreement or instrument related to the Equipment to which any or all may be a party.

SECTION 7. *Rules, Laws and Regulations.*

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including the rules of the Interstate Commerce Commission and the current Interchange Rules and supplements thereto of the Mechanical Division Association of American Railroads) with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance on any such Item of Equipment shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements.

SECTION 8. *Use, Modification and Maintenance of Equipment.*

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense as additional rent, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Lessee shall have the right, at its own cost and expense as additional rent, to make changes, modifications, alterations or installations in or on any Item of Equipment which are not prohibited by any governmental law, regulation, requirement or rule and which do not impair the value of such Item or the use of such Item in the service for which the Item was originally designed. Any parts installed or replacements made by the Lessee upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor; *provided, however*, that the Lessee shall have the right at any time during the term of this Lease, without accounting to the Lessor therefor, to remove from any Item of Equipment any accessory, equipment or device which can be removed without impairing the

value of such Item or the use of such Item in the service for which the Item was originally designed. The Lessee shall be liable for the repair of any damage to an Item of Equipment caused by such removal. Subject to the requirements of this Section 8, the Lessee shall have the right to dispose of any worn out or obsolete parts, accessories, equipment or devices with or without replacement thereof and to replace the same with other parts, accessories, equipment or devices without accounting to the Lessor for any thereof.

SECTION 9. *Liens on the Equipment.*

9.1. *Liens to be Discharged by Lessee.* The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive termination of the Lease.

9.2. *Liens to be Discharged by Lessor.* The Lessor shall pay or satisfy and discharge any liens or encumbrances on the Equipment which result from claims against the Lessor not related to its ownership of the Trust Estate (as defined in the Trust Agreement) and, to the extent funds are received by Lessor from the Settlor under the Trust Agreement for such purpose shall pay or satisfy and discharge any and all claims against, through or under the Lessor and its successors or assigns (other than the Security Agreement referred to in Section 16 and claims resulting from the Lessee's failure to perform or observe any of its agreements hereunder or under the Agreement to Acquire and Lease dated as of February 4, 1971, between the Lessor and the Lessee) which, if unpaid, might constitute or become a lien or charge upon the Equipment and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessor to perform any of its covenants or agreements under this Lease, which, if allowed to remain, would affect or endanger the Lessee's right of quiet enjoyment and use of the Equipment. Lessor shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the Lessee's right of quiet enjoyment and use of the Equipment. The Lessor's obligations under this Section 9.2 shall survive termination of the Lease.

SECTION 10. *Filing, Payment of Fees and Taxes.*

10.1. *Filing.* Prior to the delivery and acceptance of the first Item of Equipment, the Lessee will, at its sole expense, cause this Lease and prior to the first Closing Date (as defined in the Loan Agreement) cause the Security Agreement (as defined in Section 16 hereof) executed by the Lessor with respect to the Equipment or the Lease to be duly filed, registered or recorded in conformity with Section 20c of the Interstate Commerce Act and in such other places within or without the United States as the Lessor may reasonably request for the protection of its title or the security interest of each holder from time to time of a note issued pursuant to the Loan Agreement referred to in Section 14.1(d) hereof (a "note" and collectively the "notes") and will furnish the Lessor proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, and re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to, or such holders' security interest in, the Equipment to the satisfaction of the Lessor's or such holders' counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay, as additional rent, all costs, charges and expenses incident to any such filing, re-filing, registering, re-registering, recording and re-recording of any such instruments or incident to the taking of such action.

10.2. *Payment of Taxes.* The Lessee shall or the Lessor at the Lessee's expense, as additional rent, may, report, pay and discharge when due all license and registration fees, assessments, sales, use and property taxes, gross receipts taxes arising out of receipts from use or operation of Equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing levied or assessed and arising under the term of this Lease against the Equipment or the interest of the Lessor or Lessee therein and in respect thereof, all documentary, stamp or similar taxes payable in respect of the Trust Agreement or the issuance and delivery of the Notes, and all sales and use taxes which may be levied or assessed against or payable by Lessor or Lessee on account of the acquisition, leasing or subleasing or use of the Equipment, exclusive, however, of any income taxes, local and state franchise taxes, and any other taxes on or measured by net income (except any taxes based on such net income which is in direct substitution for, or which relieves the Lessee from, a tax which the Lessee would otherwise be obligated to pay under the terms of this Section), together with any penalties or interest thereon, imposed by any state, federal or local government upon any Item of Equipment and whether or not the same shall be

assessed against or in the name of the Lessor, the Lessee, the Settlor or the Lender ; *provided, however*, that the Lessee shall not be required to pay or discharge any such tax or assessment (i) so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment; however, the Lessee shall reimburse the Lessor for any damages or expenses resulting from such failure to pay or discharge, or (ii) as to assessments against or in the name of anyone other than the Lessee, until 20 days after written notice thereof shall have been given to the Lessee. All of the obligations of Lessee under this Section 10.2 shall survive the expiration or earlier termination of this Lease and are expressly made for the benefit of, and shall be enforceable by, the Lessor, the Settlor and each holder of a Note.

SECTION 11. *Payment for Casualty Occurrence or Equipment Unserviceable for Use.*

11.1. *Notification by Lessee of Casualty Occurrence.* In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease (any such occurrence, except for any requisition which by its terms does not exceed the remaining term of this Lease, being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) notify the Lessor in regard thereto.

11.2. *Payment for Casualty Occurrence.* On the next succeeding Rent Payment Date applicable to any Item of Equipment as to which notice has been given to the Lessor pursuant to Section 11.1 above, the Lessee shall pay to the Lessor, in lieu of the Periodic Rent due for such Item or Items of Equipment on or after such Rent Payment Date, a sum equal to the Casualty Value (as defined in Section 11.7 hereof) of such Item or Items of Equipment as of the date of such payment.

11.3. *Optional Retirement of Equipment.* In the event that, in the good faith judgment of the Lessee, any Item of Equipment shall have become economically unserviceable or unserviceable due to restrictions on use by Lessee imposed by governmental law, regulation, requirement or rule, the Lessee may upon not less than 30 days prior written notice to the Lessor, which notice shall identify such Item and designate the date on which termination will be effective and settlement for such Item will be made, terminate this Lease with respect to such Item as of the twenty-first Rent Payment Date therefor or as of any succeeding Rent Payment Date upon payment to the Lessor of an amount

equal to the Termination Value (as defined in Section 11.8 hereof) of such Item. For the purposes of this Section 11.3, interest rates or similar finance charges payable by the Lessee in connection with the acquisition of equipment under conditional sales contracts, leases or other arrangements for deferred payment of the purchase price, shall be disregarded in the determination of economic unserviceability.

11.4. *Rent Termination.* Upon (and not until) payment of the Casualty Value or, as the case may be, the Termination Value in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment. The Lessee shall pay when due all rent payments as to an Item or Items due prior to the date on which the Casualty Value or, as the case may be, the Termination Value thereof is payable. In connection with the payment of the Casualty Value or, as the case may be, the Termination Value of any Item of Equipment, the Lessee shall furnish to the Lessor a schedule listing the Equipment which remains subject to this Lease after giving effect to such Casualty or Termination Value payment and the Periodic Rent which will accrue and become payable with respect to such Equipment.

11.5. *Disposition of Equipment.* The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment for which settlement has been made pursuant to Section 11.2 or 11.3 as promptly as possible for the highest price obtainable. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty express or implied. As to each separate Item of Equipment so disposed of the Lessee shall be entitled to receive and retain all proceeds of the disposition (including in the case of a Casualty Occurrence, any insurance proceeds and damages received by the Lessee or the Lessor) up to the sum of (i) the out-of-pocket expenses (including legal costs and attorneys' fees) incurred by the Lessee in connection with such disposition, and (ii) the Casualty Value or, as the case may be, the Termination Value thereof, and shall remit the excess, if any, to the Lessor. Neither the Lessee nor any person, firm or corporation controlled by, in the control of or under common control with the Lessee shall be permitted to purchase any Item of Equipment with respect to which the Lease has been terminated pursuant to Section 11.3. It is understood and agreed that the Lessor shall not be liable to the Lessee for any costs or expenses incurred by the Lessee in connection with the disposition of any Item of Equipment.

11.6. *Casualty Prior to Commencement of Periodic Rent.* In the event the Lessee shall have notified the Lessor that an Item or Items of Equipment have suffered a Casualty Occurrence 15 days or more prior to the commencement of

Periodic Rent hereunder with respect thereto, the Casualty Value for such Item or Items shall be an amount equal to 100% of its cost and shall be payable within 15 days after the date of notice to the Lessor of such Casualty Occurrence. If the Lessee shall have notified the Lessor that an Item or Items of Equipment have suffered a Casualty Occurrence less than 15 days prior to the commencement of Periodic Rent hereunder with respect thereto, the date of such Casualty Occurrence for such Item or Items shall be deemed to be one day after the due date of the first installment of Periodic Rent.

11.7. *Casualty Value.* The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in Section 11.2 hereof (and not the date of the Casualty Occurrence) equal to that percentage of the original cost to the Lessor of such Item of Equipment as set forth in the Schedule of Casualty Value attached hereto as Schedule 2.

11.8. *Termination Value.* The Termination Value of each Item of Equipment shall be the amount determined as of the date the Termination Value is paid as provided in Section 11.3 hereof equal to that percentage of the original cost to the Lessor of such Item of Equipment as set forth in the Schedule of Termination Value attached hereto as Schedule 3.

11.9. *Risk of Loss.* The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment after the date hereof.

11.10. *Eminent Domain.* In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not exceed the remaining term of this Lease, the Lessee's duty to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property subject to the terms and provisions of the Trust Agreement. In the event of any requisition constituting a Casualty Occurrence, the Lessee shall be entitled to receive and retain for its own account all sums payable by the governmental authority as compensation for such requisition up to the sum of (i) the out-of-pocket expenses (including legal costs and attorneys' fees) incurred by the Lessee in connection with such requisition and (ii) the Casualty Value of the Item or Items of Equipment which were requisitioned, and the balance, if any, shall be payable to and retained by the

Lessor as its sole property subject to the terms and provisions of the Trust Agreement.

11.11. *Recovery of and Prosecution of Claims.* The Lessor hereby authorizes and empowers the Lessee as agent for the Lessor to negotiate, accept, reject, file and prosecute any claims, including what otherwise would be the Lessor's claim, for any award or compensation on account of any loss, damage, destruction, confiscation, requisition or taking of any Item of Equipment and to collect and retain the proceeds thereof to the extent permitted by this Section 11. The proceeds obtained by the Lessee for any loss or damage which is not a Casualty Occurrence shall be retained by the Lessee and applied to the repair or replacement of such damage or loss.

SECTION 12. *Annual Reports.*

12.1. *Duty of Lessee to Furnish.* On or before April 1 in each year, commencing with the year 1972, the Lessee will furnish to the Lessor or its assigns an accurate statement, as of the preceding fiscal year (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and number of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2. *Lessor's Inspection Rights.* The Lessor or its assigns shall have the right, at its sole cost and expense, by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor or its assigns the existence and proper maintenance thereof during the continuance of this Lease. Lessee shall not be required to retain any records with respect to the Equipment beyond its normal retention policy or as may otherwise be required by any governmental law, rule or regulation.

SECTION 13. *Return of Equipment Upon Expiration of Term.*

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense as additional rent, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks within 25 miles of any one of the following locations selected by the Lessee: Chicago, Illinois, Los Angeles, California, Texas City, Texas or South Charleston, West Virginia. The Lessee will use

reasonable efforts to place at least 25 Items of Equipment at any one location. The Lessee shall give prompt written notice to the Lessor of the location or locations selected for surrender of the Equipment and the car numbers of the Items of Equipment placed on the storage tracks at each such location. The Lessee will provide storage for such Item of Equipment on such tracks for a period not exceeding 45 days. All such storage of each such Item is to be at the risk and expense as additional rent of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same. The assembling, delivery and storage of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

SECTION 14. *Default.*

14.1. *Events of Default.* If, during the continuance of this Lease, one or more of the following events ("Events of Default") shall occur and be continuing:

(a) Default shall be made in the payment of any part of the rental provided in Section 2 hereof and such default shall continue unremedied for more than five calendar days; or

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of Lessee's interest in the Equipment, or any portion thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein within 15 days after written notice from the Lessor to the Lessee demanding such cancellation; or

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in any other agreement entered into by the Lessee with the Lessor or the Settlor in respect of the Equipment, and such default shall continue for 15 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied; or

(d) Any representation or warranty made by the Lessee herein or in any statement or certificate furnished pursuant to this Lease or the Loan Agreement to be entered into between the Lessor and the institutional investor named therein (the "Lender"), respectively, proves untrue in any material respect as of the date of issuance or making thereof and shall not be made good within 15 days after notice thereof to the Lessee by the Lessor; or

(e) The Lessee shall become insolvent or bankrupt or admit in writing its inability to pay its debts as they mature or shall make an assignment for the benefit of its creditors; or

(f) Bankruptcy, reorganization, arrangement or insolvency proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors shall be instituted by or against Lessee; or Lessee shall permit or there shall occur any involuntary transfer of its interest hereunder or of all or substantially all of Lessee's property by bankruptcy or by the appointment of a receiver or trustee or by execution or by any judicial or administrative decree or process or otherwise; unless in every such case such proceedings (if instituted against the Lessee) shall be dismissed or such assignment, transfer, decree or process shall within 60 days from the filing or other effective date therein be nullified, stayed or otherwise rendered ineffective, or unless any such receiver or trustee shall within 60 days from the date of his appointment adopt and assume this Lease pursuant to due authority of law and of the court appointing him;

then in any such case the Lessor, at its option, may declare this Lease to be in default, and at any time thereafter, so long as the Lessee shall not have remedied all outstanding Events of Default, the Lessor may do one or more of the following with respect to any or all Equipment as the Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect:

(1) cause the Lessee, upon the written demand of the Lessor and at the Lessee's expense, to promptly return any or all Equipment to the Lessor at the location, in the condition and otherwise in accordance with all of the terms of Section 15 hereof, or the Lessor, at its option, may enter upon the premises where such Equipment is located and take immediate possession of and remove such Equipment by summary proceedings or otherwise (all without liability to the Lessor for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise), and cause the removal and storage at the Lessee's cost and expense of any freight on board, and in connection with the removal of such Equipment, the Lessor or its agents may traverse any available trackage of the Lessee, whereupon this Lease as to such Equipment shall terminate;

(2) upon the giving of notice of termination by Lessor of this Lease to Lessee as to any or all of the Equipment, sell any or all of such Equipment at public or private sale and with or without notice to the Lessee or advertisement, as the Lessor may determine, or otherwise dispose of, hold, use, operate, lease to others or keep idle any or all of such Equipment as the Lessor in its sole discretion may determine, all free and clear of any rights of the Lessee and without any duty to account to the Lessee with respect to such action or inaction or for any proceeds with respect thereto

except to the extent required by paragraph (4) below in the event the Lessor elects to exercise its rights under said paragraph in lieu of its rights under paragraph (3) below;

(3) whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (1) or paragraph (2) above, the Lessor, in the case of any or all of the Equipment, by written notice to Lessee terminating this Lease as to such Equipment and specifying a payment date not earlier than 15 days from the date of such notice, may cause the Lessee to pay to the Lessor, on the date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty, any unpaid rent due up to but not including the Rent Payment Date for such Equipment (or the date which would have been such Rent Payment Date but for the termination of this Lease) next following the date specified in such notice plus whichever of the following amounts the Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount at the rate of 9% per annum from the date specified in such notice to the date of actual payment): (i) an amount equal to the excess, if any, of (x) the aggregate Casualty Value of all such Equipment under lease immediately prior to the date specified in such notice, computed as of such Rent Payment Date next following the date specified in such notice, over (y) the aggregate fair market rental value (computed as hereafter in this Section provided) of such Equipment for the remainder of the lease term of such Equipment hereunder, after discounting such fair market rental value monthly (or on such other periodic basis as the rent is payable hereunder) to present worth as of such rent payment date specified in such notice at the rate of 9% per annum; or (ii) an amount equal to the excess, if any, of the amount referred to in subclause (x) above over the aggregate fair market sales value of such Equipment (computed as hereafter in this Section provided) as of such Rent Payment Date next following the date specified in such notice; *provided, however*, that the Lessor shall only be entitled without deduction to the amount referred to in clause (i) above for any Equipment if either (A) nonpayment of rent by the Lessee shall have been the Event of Default causing this Lease to be declared in default or (B) regardless of the Event of Default, the Lessor shall have demanded the return of such Equipment pursuant to paragraph (1) above and the Lessee shall have failed to return such Equipment in accordance with the terms of said paragraph;

(4) in the event the Lessor, pursuant to paragraph (2) above, shall have sold any or all of the Equipment, the Lessor, in lieu of exercising its rights under paragraph (3) above with respect to such Equipment, may, if it shall so elect, cause the Lessee to pay the Lessor, as liquidated damages for loss of a bargain and not as a penalty, any unpaid rent due up to but not including the Rent Payment Date for such Equipment (or the date which would have been such Rent Payment Date but for the termination of this Lease) next following the date of termination plus the amount of any deficiency between the net proceeds of such sale and the Casualty Value of such Equipment computed as of such Rent Payment Date, together with

interest at the rate of 9% per annum on the amount of such deficiency from the date of such sale until the date of actual payment; and/or

(5) in the event the Lessor elects not to pursue any of the foregoing remedies, the Lessor may exercise any other right or remedy which may be available to it now or hereafter existing at law or in equity; *provided, however*, that in the event the Lessor shall exercise the remedies referred to in paragraph (3) or paragraph (4) above, liquidated damages having been agreed to between the parties as provided in said paragraphs, the Lessee's damages shall not be more or less than as provided in said paragraphs.

In addition, the Lessee shall be liable for any and all unpaid additional rent due hereunder before, after or during the exercise of any of the foregoing remedies and for all legal fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Lessor's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Equipment in accordance with the terms of Section 15 hereof or in placing such Equipment in the condition required by said Section.

For the purpose of paragraph (3) above, the "fair market rental value" or the "fair market sales value" of any Equipment shall be determined by the average of two appraisals, both by recognized independent appraisers, one of which appraisers shall be chosen by the Lessor and one by the Lessee, except that such "fair market rental value" or "fair market sales value" shall be determined by the appraiser chosen by the Lessor if the Lessee fails to furnish the appraisal of the appraiser selected by it within 10 days after the giving of the written notice from the Lessor referred to in paragraph (3) above. At any sale of Equipment pursuant to this Section the Lessor may bid for and purchase such Equipment.

14.2. Cumulative Remedies. The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any off-set against the rent payments due hereunder, and agrees to make the rent payments regardless of any off-set or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.3. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the

contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

SECTION 15. *Return of Equipment Upon Default.*

15.1. *Lessee's Duty to Return.* If the Lessor shall terminate this Lease pursuant to Section 14 hereof the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith assemble and place such Equipment upon such storage tracks within 25 miles of Texas City, Texas, as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Provide storage at the risk of the Lessee for such Equipment on such tracks for a period not exceeding 180 days after written notice to the Lessor specifying the place of storage and the car numbers of the Items so stored; and

(c) Transport any Items of Equipment, at any time within such 180 days' period, to any place on the lines of a railroad within a 25-mile radius of such storage tracks, all as the Lessor may reasonably direct upon not less than 30 days' written notice to the Lessee.

15.2. *Intention of Parties.* The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so as to assemble, deliver, store and transport the Equipment.

15.3. *Lessor Appointed Lessee's Agent.* Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to Lessor, to demand and take possession of such Item in the name and on behalf of Lessee from whomsoever shall be at the time in possession of such Item.

SECTION 16. *Assignments by Lessor.*

The Lessor intends to assign this Lease and all rent and other sums due and to become due hereunder to the Lender under a Security Agreement—Trust Deed (the "Security Agreement") to be executed and delivered by the Lessor as

collateral security for indebtedness of the Lessor incurred to finance the acquisition of the Equipment. The Lender shall not be bound by or obligated to perform or see to the performance of any duty, covenant or condition or warranty (express or implied) made by the Lessor or required to be observed or performed by the Lessor under any of the terms hereof, but notwithstanding such assignment each and all of such covenants, agreements and warranties of the Lessor shall survive such assignment and shall be and remain the sole liability of the Lessor. Without limiting the foregoing, the Lessee further acknowledges and agrees than (i) the rights of any such assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, set-off, counterclaim, or recoupment whatsoever whether by reason of or defect in the Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of the Lender) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of the Lender, the Lessee shall be unconditionally and absolutely obligated to pay the Lender all of the rents and other sums which are the subject matter of the Security Agreement, and (ii) the assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor.

SECTION 17. *Assignments by Lessee: Use and Possession.*

17.1. *Lessee's Rights to the Equipment.* So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession, use and quiet enjoyment of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor which will not be unreasonably withheld, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment.

17.2. *Use and Possession by Lessee, Interchange, "Mileage".* So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to and shall have the exclusive use and possession of the Equipment. The Lessee agrees that the Equipment will be used within the continental United States, Mexico, Canada and Puerto Rico. The Lessee agrees that it will not, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, assign this Lease or any of its rights hereunder or sub-

lease any Item of Equipment; provided, however, that nothing contained in this Lease shall be deemed to prevent the assignment or sublease of any Item of Equipment to a subsidiary of the Lessee, or to the Lessee's vendors, customers and consignees of goods being shipped, or the use of any Item of Equipment by others in the continental United States, Mexico, Canada and Puerto Rico in the usual interchange of traffic. No such assignment, sublease or permitted use shall relieve the Lessee of any of the obligations, liabilities or duties hereunder which shall be and remain those of a principal and not a surety. The Lessee may receive and retain for its own account such compensation for subletting the Equipment and/or for the use of the Equipment by others as the Lessee may determine. To the extent that any sums paid on account of the Equipment, including, without limitation, mileage allowances, rentals and/or other compensation paid by carriers by reason of the use, ownership or operation of the Equipment (hereinafter referred to as "Mileage") are received by Lessor, Lessor shall hold such sums in a special account, and not as part of the Trust Estate and shall from time to time, upon receipt of a written request from Lessee, remit the amount of such Mileage so requested to Lessee. Lessee shall have no further right to any such Mileage not so requested within sixty (60) days after termination of this Lease. The obligation of the Lessor shall survive termination of this Lease.

The term "additional rent" has been used throughout this Lease to describe certain expenditures to be incurred by the Lessee which will be used in the computation of "Mileage" earned by the Lessee under this Section 17.2.

17.3. *Merger, Consolidation or Acquisition of Lessee.* Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation (which shall have duly assumed the obligations hereunder of Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

SECTION 18. *Lessee's Representations and Warranties; Opinion of Lessee's Counsel and Officer's Certificate.*

18.1. *Lessee's Representations and Warranties.* The Lessee hereby represents and warrants that:

(a) The Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of New York;

(b) The Lessee has the corporate power and authority to own its property and carry on its business as now being conducted and is duly qualified

to do business as a foreign corporation in all states in which such qualification is necessary to carry out the terms of the Lease;

(c) This Lease and the Agreement to Acquire and Lease of even date herewith, between the Lessor and the Lessee have been duly authorized, executed and delivered by the Lessee and constitute the valid, legal and binding agreements of the Lessee enforceable in accordance with their respective terms;

(d) This Lease is in due form for recording pursuant to Section 20c of the Interstate Commerce Act; forthwith upon the execution and delivery of this Lease the same will be duly recorded by Lessee pursuant to said Section 20c; and, upon such recording, the Lessor's title to the Equipment will be duly protected and established as against the Lessee and its creditors;

(e) No approval, consent or withholding of objection is required from any public regulatory body with respect to the entering into or performance of the Agreement to Acquire and Lease or this Lease;

(f) The execution and delivery by Lessee of the Agreement to Acquire and Lease and this Lease do not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of the Lessee, or any indenture, agreement or other instrument to which Lessee is a party or by which it, or any of its property, is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Lessee, except as contemplated and permitted hereby; and

(g) There are no pending or threatened actions or proceedings before any court or administrative agency which may materially adversely affect the Lessee's financial condition or operations.

18.2. *Opinion of Lessee's Counsel and Officer's Certificate.* Concurrently with the delivery and acceptance of the first Item of Equipment hereunder and on each Closing Date, the Lessee will deliver to the Lessor, the Settlor and the Lender the written opinion of counsel for the Lessee and a certificate of a Vice President of the Lessee, each addressed to the Lessor and the Lender, in scope and substance satisfactory to the Lessor, as to the matters referred to in Section 18.1 above (except subsection (d) thereof), as to any other matters which the Lessor shall reasonably request and, in the case of such opinion, to the effect that this Lease has been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and no other filing, recording, or depositing in the United States is necessary to protect (a)

the Lessor's title to the Equipment as against the Lessee and its creditors, and (b) except for the due and timely recording of a signed copy of the Security Agreement (including any Supplement thereto), pursuant to Section 20c of the Interstate Commerce Act and the filing of such financing statements as shall be necessary or advisable, the interests of the Lender.

SECTION 19. *Interest on Overdue Rentals and Amounts Paid by Lessor.*

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the obligation on the part of the Lessee to pay also an amount equal to 9% per annum (or the lawful rate, whichever is less) of the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. *Notices.*

Any notice required or permitted to be given by any party hereof to any other party shall be deemed to have been given when deposited in the United States mails, certified first class postage prepaid, addressed as follows:

| | |
|-------------------|-------------------------------------------------------------------------------------------------------------------|
| If to the Lessor: | Bankers Trust Company 16 Wall Street New York, New York 10015 <i>Attention:</i> Corporate Trust Division |
|-------------------|-------------------------------------------------------------------------------------------------------------------|

| | |
|-------------------|------------------------------------------------------------------------------------------------------------------------|
| If to the Lessee: | Union Carbide Corporation 270 Park Avenue New York, New York 10017 <i>Attention:</i> Director of Distribution |
|-------------------|------------------------------------------------------------------------------------------------------------------------|

or addressed to any party at such other address as such party shall hereafter furnish to each other party in writing.

SECTION 21. *Execution in Counterparts.*

This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

SECTION 22. *Law Governing.*

This Lease shall be construed in accordance with the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by any applicable federal statute, rule or regulation.

SECTION 23. *Option to Purchase.*

23.1. *Terms.* Provided that the Lessee is not in default, Lessee shall have the following option to purchase:

(a) The Lessee shall have the right at the expiration of the term of this Lease as to each Item or Items of Equipment to purchase all but not less than all of such Items of Equipment whose term is then expiring at a price equal to the "fair market value" (as defined). The Lessee shall give to the Lessor written notice at least 180 days prior to the end of each said term of its election to exercise the purchase option provided for in this Section, stating the Items of Equipment to be purchased by car number. Payment of the option price shall be made at the place of payment specified in Section 2 hereof in New York Clearing House funds against delivery of (i) a bill of sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to such Item or Items of Equipment and containing a warranty against liens or claims of persons claiming by, through or under the Lessor except liens and claims which the Lessee assumed or is obligated to discharge under the terms of this Lease; (ii) a satisfaction and discharge of this Lease duly executed in recordable form by the Lessor or its successors and assigns as to such Item or Items of Equipment; (iii) a satisfaction of the Security Agreement duly executed in recordable form by the Lender. The Lessor shall not be required to make any representation or warranties as to the condition of the Equipment or any other matters.

(b) The "fair market value" shall be an amount mutually agreed upon by the Lessor and the Lessee; provided that if the Lessor and the Lessee are unable to agree upon the fair market value of the Item or Items of Equipment in question within thirty (30) days after receipt by the Lessor of the notice of the Lessee's election to exercise the purchase option, the fair market value shall be determined by an appraiser selected by mutual agreement of the Lessor and the Lessee. If the Lessor and the Lessee are not able to agree upon an appraiser, or if the fair market value is not so determined within ninety (90) days after receipt by the Lessor of the Lessee's election to purchase, the same shall be determined by American Appraisal Company. The fair market value, as finally determined, shall bear interest for the period, if any, from the date of expiration of this Lease to the date of payment at the rate of 9% per annum. In determining the fair market value of any Item of Equipment, any accessory, equipment and device installed thereon which, under the terms of Section 8 hereof, the Lessee is entitled to remove without an accounting to the Lessor, shall be separately appraised and the fair market value thereof shall not be included in the price to be paid by the Lessee.

(c) Unless the Lessee has given the Lessor 180 days' notice as required in connection with the exercise of the foregoing option, such Items of Equipment so affected and then leased hereunder shall be returned to the Lessor in accordance with Section 13 hereof.

(d) In the event that the Lessee shall not have exercised its option to purchase the Equipment at the end of the lease term thereof pursuant to paragraph (a) of this Section 23, the Lessor agrees that it will not sell such Equipment for a period of 45 days following the end of such lease term unless the Lessor shall have given the Lessee at least 5 business days' prior written notice of such sale, specifying the sale price and terms of such sale, and the Lessee shall have had the opportunity to purchase such Equipment at the same price and on the same terms as specified in such notice.

23.2. *Election to Purchase.* Notwithstanding any election of the Lessee to purchase, the provisions of Section 11 hereof shall continue in full force and effect until the date of purchase and the passage of ownership of the Equipment purchased by the Lessee upon the date of purchase unless the purchase price has been agreed upon by the parties pursuant to this Section 23, in which event such purchase price shall govern.

SECTION 24. *Successors and Assigns.*

This Lease shall be binding upon and shall inure to the benefit of the Lessor and Lessee and their respective successors and assigns.

Section 25. Insurance

WMA
7/11
25.1 Lessee will, without cost to Lessor, cause to be maintained in effect throughout the Lease term with insurers of recognized responsibility, insurance policies insuring against loss or damage to each item of Equipment from such risks and in such amounts as Lessee would in the prudent management of its property cause to be maintained with respect to similar equipment owned by it, provided that the amount of such insurance with respect to each unit shall not at any time be less than the Casualty Value of such unit as of the next following applicable Rent Payment Date. Notwithstanding the provisions of the foregoing sentence, Lessee may self-insure against such risks if the units are self-insured to no greater than any similar railroad equipment owned by Lessee.

25.2 Lessee will, without cost to Lessor, maintain or cause to be maintained in effect throughout the Lease term on the Equipment with insurers of recognized responsibility, insurance policies insuring against loss or damage to the person and property of others in such amounts as Lessee would in the prudent management of its business maintain with respect to similar railroad equipment owned by it, provided that Lessee may self-insure against such risks to the extent that Lessee self-insures against such risk with respect to similar equipment owned by it.

STATE OF NEW YORK
CITY AND COUNTY OF NEW YORK } ss.:

On this 12th day of FEBRUARY, 1971, before me personally appeared THOMAS F. COLEMAN, to me personally known, who being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

[SEAL]

Marie R. Porcello

My commission expires: MARCH 30, 1971

MARIE R. PORCELLO
NOTARY PUBLIC, State of New York
No. 60-3134250
Qualified in Westchester County
Cert. Filed in New York County
Commission Expires March 30, 1971

STATE OF NEW YORK
CITY AND COUNTY OF NEW YORK } ss.:

On this 12th day of FEBRUARY, 1971, before me personally appeared WILLIAM M. HENDERSON, to me personally known, who being by me duly sworn, says that he is a Vice President of UNION CARBIDE CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

Marie R. Porcello

My commission expires: MARCH 30, 1971

MARIE R. PORCELLO
NOTARY PUBLIC, State of New York
No. 60-3134250
Qualified in Westchester County
Cert. Filed in New York County
Commission Expires March 30, 1971

SCHEDULE 1

CLASS A

MANUFACTURER: Shippers' Car Line, Division of ACF Industries, Incorporated

DESCRIPTION OF EQUIPMENT,

INCLUDING SERIAL NUMBERS: 174 5,250 cu. ft. lined covered hopper cars,
Car Numbers UCFX 60192—UCFX 60365

PRICE PER UNIT: \$20,145.00 per unit

TOTAL PRICE: \$3,505,230.00 for all 174 units

DELIVERY TO: Union Carbide Corporation, as directed by
the Corporation

OUTSIDE DELIVERY DATE: January 15, 1972

RENT PERIOD: Twenty-five (25) years commencing with the
first rental payment date

PERIODIC RENT: 50 semi-annual installments, in advance,
of \$843.07 per unit, or an aggregate of
\$146,694.18 for all 174 units

FIRST RENTAL PAYMENT DATE:

LAST RENTAL PAYMENT DATE:

* In the event the price of any Items covered by this Schedule is greater or less than the amounts shown above by up to 10%, the rentals for such Items shall be ratably increased or reduced.

LESSEE: Union Carbide Corporation—Trust No. 3

SETTLOR: Industrial Leasing Corporation

LENDER:

CLASS B

MANUFACTURER: Shippers' Car Line, Division of ACF Industries, Incorporated

DESCRIPTION OF EQUIPMENT,

INCLUDING SERIAL NUMBERS: 8 5,700 cu. ft. lined covered hopper cars,
Car Numbers UCFX 57065—UCFX 57072

PRICE PER UNIT: \$27,690.00 per unit

TOTAL PRICE: \$221,520.00 for all 8 units

DELIVERY TO: Union Carbide Corporation, as directed by
the Corporation

OUTSIDE DELIVERY DATE: January 15, 1972

RENT PERIOD: Twenty-five (25) years commencing with the
first rental payment date

PERIODIC RENT: *WMA* 50 semi-annual installments, in advance, of
JK *\$1,158.03* ~~\$115.88~~ per unit, or an aggregate of ~~\$927.04~~
for all 8 units

FIRST RENTAL PAYMENT DATE:

LAST RENTAL PAYMENT DATE:

JK *\$9,270.64*
WMA

* In the event the price of any Items covered by this Schedule is greater or less than the amounts shown above by up to 10%, the rentals for such Items shall be ratably increased or reduced.

LESSEE: Union Carbide Corporation—Trust No. 3

SETTLOR: Industrial Leasing Corporation

LENDER:

SCHEDULE OF CASUALTY VALUE

UNION CARBIDE CORPORATION

CASUALTY VALUE: The following percent of original cost to the Lessor of an Item of Equipment, set forth in Schedule 1 to the Lease, including all taxes and delivery charges, is to be paid on each Rent Payment Date pursuant to Section 11 of the Equipment Lease as the result of an Item becoming the subject of a Casualty Occurrence, depending upon when the Casualty Value is paid:

| <u>After Rent Payment No.</u> | <u>Payable on Date and in Lieu of Payment No.</u> | <u>Casualty Value Payable Per Item (in lieu of rental payment for such item due on such dates)</u> |
|-----------------------------------|-----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| 1 | 2 | 103.0280 |
| 2 | 3 | 102.8635 |
| 3 | 4 | 102.6948 |
| 4 | 5 | 102.5878 |
| 5 | 6 | 102.5377 |
| 6 | 7 | 102.3630 |
| 7 | 8 | 102.1612 |
| 8 | 9 | 101.7521 |
| 9 | 10 | 101.3145 |
| 10 | 11 | 100.6674 |
| 11 | 12 | 99.9908 |
| 12 | 13 | 99.2058 |
| 13 | 14 | 98.5127 |
| 14 | 15 | 97.5749 |
| 15 | 16 | 96.6570 |
| 16 | 17 | 95.5359 |
| 17 | 18 | 94.4439 |
| 18 | 19 | 93.1538 |
| 19 | 20 | 91.8941 |
| 20 | 21 | 90.4364 |
| 21 | 22 | 89.0082 |
| 22 | 23 | 87.3829 |
| 23 | 24 | 85.7862 |
| 24 | 25 | 83.9938 |
| 25 | 26 | 82.2292 |

(U. C. Trust 3—Rolling Stock)

| <u>After Rent Payment No.</u> | <u>Payable on Date and in Lieu of Payment No.</u> | <u>Casualty Value Payable Per Item (in lieu of rental payment for such item due on such dates)</u> |
|-----------------------------------|-----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| 26 | 27 | 80.2701 |
| 27 | 28 | 78.3361 |
| 28 | 29 | 76.2084 |
| 29 | 30 | 74.1070 |
| 30 | 31 | 71.8122 |
| 31 | 32 | 69.5430 |
| 32 | 33 | 67.0807 |
| 33 | 34 | 64.6434 |
| 34 | 35 | 62.0136 |
| 35 | 36 | 59.4082 |
| 36 | 37 | 56.6117 |
| 37 | 38 | 53.8390 |
| 38 | 39 | 50.8753 |
| 39 | 40 | 49.1962 |
| 40 | 41 | 46.5930 |
| 41 | 42 | 43.8990 |
| 42 | 43 | 41.1107 |
| 43 | 44 | 38.2252 |
| 44 | 45 | 35.2389 |
| 45 | 46 | 32.1485 |
| 46 | 47 | 28.9501 |
| 47 | 48 | 25.6400 |
| 48 | 49 | 22.2143 |
| 49 | 50 | 18.6691 |
| 50 | on the Expiration Date of the Lease | 15.0000 |

(U. C. Trust 3—Rolling Stock)

SCHEDULE OF TERMINATION VALUE

UNION CARBIDE CORPORATION

TERMINATION VALUE: The following percent of original cost to Lessor of an Item of Equipment, set forth in Schedule 1 to the Lease, including all taxes and delivery charges, is to be paid on each Rent Payment Date pursuant to Section 11.3 of the Equipment Lease as the result of the Lease terminating with respect to an Item of Equipment, depending upon when the Termination Value is paid:

| <u>Payable on Date and in Lieu of Payment No.</u> | <u>Termination Value Payable Per Item (in lieu of rental payment for such item due on such date)</u> |
|-----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| 21 | 85.1881 |
| 22 | 83.5729 |
| 23 | 81.7540 |
| 24 | 79.9568 |
| 25 | 77.9567 |
| 26 | 75.9770 |
| 27 | 73.7942 |
| 28 | 71.6305 |
| 29 | 69.2639 |
| 30 | 66.9151 |
| 31 | 64.3641 |
| 32 | 61.8296 |
| 33 | 59.0925 |
| 34 | 56.3706 |
| 35 | 53.4461 |
| 36 | 50.5355 |
| 37 | 47.4229 |
| 38 | 44.3229 |
| 39 | 41.0202 |
| 40 | 38.9900 |
| 41 | 36.0230 |
| 42 | 32.9526 |
| 43 | 29.7744 |
| 44 | 26.4850 |
| 45 | 23.0805 |
| 46 | 19.5569 |
| 47 | 15.9099 |
| 48 | 12.1353 |
| 49 | 8.2285 |
| 50 | 4.1850 |

(U.C. Trust 3—Rolling Stock)

CERTIFICATE OF ACCEPTANCE NO. _____
UNDER EQUIPMENT LEASE

To: BANKERS TRUST COMPANY, as Trustee under Trust Agreement dated as of February 4, 1971,

I, duly appointed authorized representative of Union Carbide Corporation (the "Lessee") for the purpose of the Agreement to Acquire and Lease and the Equipment Lease, both dated as of February 4, 1971, between Bankers Trust Company, Trustee under the Trust Agreement dated as of February 4, 1971, as Lessor, and the Lessee, do hereby certify that I have received, approved and accepted delivery on behalf of the Lessee and under said Agreement, of the following pieces of Equipment;

TYPE OF EQUIPMENT:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

NUMBERED:

I do further certify that the foregoing Equipment is in good order and condition, and appears to conform to the specifications applicable thereto and to all applicable requirements and specifications of the Interstate Commerce Commission and/or United States Department of Transportation and that each Item has been marked in accordance with Section 4.2 of the Lease.

The execution of this certificate will in no way relieve or decrease the responsibility of the Manufacturer of the Equipment for any warranties it has made with respect to the Equipment.

DATED: _____, 19__

Authorized
Representative of
UNION CARBIDE CORPORATION

EXHIBIT 2
to
Lease

Trust Agreement

Dated as of February 4, 1971

BETWEEN

INDUSTRIAL LEASING CORPORATION

As Settlor

AND

BANKERS TRUST COMPANY

As Trustee

Railroad Equipment
(U. C. Trust No. 3)

100

100

100

100

100

100

100

100

100

100

100

100

TRUST AGREEMENT

Re: UNION CARBIDE CORPORATION

(U. C. Trust No. 3)

THIS TRUST AGREEMENT, dated as of February 4, 1971 between INDUSTRIAL LEASING CORPORATION, a corporation organized and existing under the laws of the state of Rhode Island (the "Settlor"), and BANKERS TRUST COMPANY, a New York banking corporation, as trustee hereunder (the "Trustee").

Recitals:

A. Union Carbide Corporation, a New York corporation (the "Lessee") has entered into various contractual arrangements for acquisition of certain equipment (the "Equipment"), a description of which as well as the identity of the manufacturers thereof (collectively the "Manufacturers" and individually "Manufacturer") is set forth in the Lease attached hereto as Exhibit B; and

B. The Lessee desires to lease rather than purchase the Equipment; and

C. The Settlor desires to create a trust (the or this "Trust") for the purpose of acquiring the Equipment and leasing the same to the Lessee and obtaining the benefits herein provided; and

D. The Trustee is willing to accept the duties and obligations imposed hereby.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. *Directions to Execute Documents.* The Settlor hereby authorizes and directs the Trustee:

(a) to accept, execute and deliver an Agreement to Acquire and Lease substantially in the form of Exhibit A attached hereto (the "Acquisition Agreement"), providing for the assignment by the Lessee to the Trustee of the Lessee's rights to purchase the Equipment from the Manufacturers and to perform in accordance with its terms;

(b) to execute and deliver a Lease, substantially in the form attached hereto as Exhibit B (the "Lease"), between the Trustee, as lessor, and the Lessee, as lessee, providing for the lease of the Equipment to the Lessee and to perform in accordance with its terms;

(c) upon written instructions from Settlor, to execute and deliver a Loan Agreement substantially in the form attached hereto as Exhibit C (the "Loan Agreement") between the Trustee and an institutional investor

to be later designated (the "Lender") and to perform in accordance with its terms, subject to the terms and conditions of this Trust Agreement, to issue and deliver to the Lender the Trustee's secured non-recourse promissory notes substantially in the form attached as Exhibit 1 to the Loan Agreement (the "Notes" and individually a "Note"); and

(d) to execute and deliver a Security Agreement (Trust Deed) substantially in the form attached hereto as Exhibit D (the "Security Agreement") in favor of the Lender granting to the Lender a security interest in the Equipment, subject, however, to the rights of the Lessee under the Lease and assigning to the Lender all right, title and interest of the Trustee in, to and under the Lease, reserving to the Trustee until the occurrence of an event of default under the Security Agreement, the right to receive all rentals payable thereunder and all claims for damages arising out of the breach thereof in respect of such Equipment, all as more fully set forth in the Security Agreement.

The documents and agreements described or referred to in this Section 1 are hereinafter sometimes called the "Operative Documents".

SECTION 2. *Declaration of Trust.* The Trustee hereby declares and agrees to execute, and hold all its right, title and interest in and to the Equipment, subject to the terms of the Operative Documents and all rights, powers and privileges and other benefits of the Trust thereunder, including but not limited to the Lease and all rental, casualty, termination and other payments or proceeds received under the Lease and after the termination thereof with respect to the Equipment or as the result of a sale, lease or other disposition thereof or otherwise, and all other monies, proceeds or property at any time received by the Trustee, as provided under the Lease, except for "mileage", as defined in the Lease, or payments received by the Trustee on account of Trustee's fees or any indemnification provision contained in the Operative Documents, or from the Settlor (all of the foregoing being herein called the "Trust Estate"), in and subject to the Trust for the use and benefit of the Settlor.

SECTION 3. *Settlor's Agreements.* The Settlor hereby agrees:

(a) on each Closing Date (as defined in the Loan Agreement) and concurrently with the advance of funds by the Lender under the Loan Agreement, the Settlor will advance funds to the Trustee at the time and place of closing under the Loan Agreement in New York Clearing House funds in an amount equivalent to 20% of the cost of Equipment then being financed;

(b) the Settlor shall indemnify, save and hold harmless the Trustee from any and all liabilities, obligations, losses, damages, penalties, taxes, claims, actions, suits, costs, expenses or disbursements (including court costs and reasonable attorneys' fees) incurred or suffered by it as a result

of the offer, sale or delivery of the Notes, the execution and delivery of any Operative Documents and any action taken thereunder or hereunder (whether or not also indemnified against by the Lessee under the Lease, or also indemnified against by the Manufacturer or any other person); *provided, however*, the Settlor shall have no such obligation to indemnify, save and hold harmless the Trustee for any matter arising out of the gross negligence or wilful misconduct of the Trustee. In the event the Settlor shall authorize and direct the Trustee to perform any duties or to initiate or participate in any legal actions or administrative proceedings as provided in Section 5 hereof, the Settlor shall pay to the Trustee in advance an amount sufficient to cover all expenses, costs and attorneys' fees which it may thereby reasonably incur. The indemnities contained in this Section 3(b) shall survive the termination of this Trust Agreement; and

(c) the Settlor shall promptly give all instructions and pay in advance all amounts necessary to enable the Trustee to perform its obligation not to affect, by its own act or omission, the Lessee's right of quiet enjoyment of the Equipment and to discharge certain claims and liens against the Equipment pursuant to Section 9.2 of the Lease.

SECTION 4. *Trustee's Agreements.* The Trustee hereby agrees to receive all amounts payable by the Lessee as Periodic Rent under Section 2.1 of the Lease, all Casualty Value and Termination Value Payments payable by the Lessee under Section 11 of the Lease, all proceeds of the requisition of any Equipment which the Lessor is entitled to receive and retain under Section 11.10 of the Lease, all "mileage" payments referred to in Section 17.2 of the Lease held in the special account referred to in the Lease after 60 days following the termination of the Lease, all amounts payable by or recoverable from the Lessee under Section 14 of the Lease as the result of the occurrence of an event of default, all payments in respect of the purchase price of the Equipment in the event of exercise by the Lessee of the option to purchase provided for in Section 23 of the Lease, and all other proceeds of the sale or other disposition of the Equipment, and to distribute said amounts promptly upon receipt thereof *first*, so much of such payment as shall be required to pay in full the aggregate amount of the level payment of principal and interest (as well as any interest on overdue principal or interest) then due under the Notes issued in connection with the Equipment for which such rent was paid shall be paid to the holder of such Note; *second*, to the payment to the Trustee for any expense or liability incurred for which the Trustee is entitled to payment, reimbursement or indemnity hereunder or under the Lease and *third*, to the payment of the entire balance to the Settlor; *provided, however*, all rights, privileges and duties of the Trustee to receive and distribute said amounts are subject to the security interest provided for by the Security Agreement and the rights of the Lender thereunder to collect, receive and apply said amounts on the indebtedness secured thereby,

all in the manner and to the extent provided for in the Security Agreement and subject also to the rights of the Lessee to receive "mileage" payments, certain insurance proceeds and other amounts all as more fully provided for in the Lease.

SECTION 5. [Intentionally left blank.]

SECTION 6. *The Trustee.*

6.1. *General.* The Trustee assumes no liability for anything other than its own willful misconduct or gross negligence. The Trustee shall give the Settlor prompt notice of any events of default or claimed events of default under the Lease or the Loan Agreement of which it has actual knowledge. The Trustee shall take such action or refrain from taking such action with respect to such event of default as the Trustee shall be instructed in writing by the Settlor and shall be indemnified by the Settlor in a manner satisfactory to the Trustee with respect to such action. From time to time on the written instructions of the Settlor the Trustee will take such action with respect to the Trust Estate not inconsistent with the Operative Documents as may be specified in such instructions. The Trustee shall not have any duty or obligation to and agrees not to manage, control, use, sell, dispose of or otherwise deal with the Trust Estate or otherwise to take or refrain from taking any action under and in connection with the Operative Documents except as expressly provided by the provisions of this Trust Agreement or as expressly provided in written instruction from the Settlor and no implied duties or obligations shall be read into this Trust Agreement against the Trustee. The Trustee nevertheless agrees that it will at its own cost and expense promptly take such action as may be necessary to duly discharge any liens or encumbrances on the Trust Estate which result from claims against the Trustee not related to its ownership of the Trust Estate. The Trustee makes no representation or warranty as to the value, condition, merchantability or fitness for use of the Trust Estate or as to its title thereto or as to the legality, validity or enforceability of any of the Operative Documents or as to the correctness of any statement contained in any of such documents except the Trustee represents and warrants that this Agreement and each of the Operative Documents has been or will be executed and delivered by one of its officers who is or will be duly authorized to execute and deliver such document on its behalf. Monies received by the Trustee hereunder need not be segregated in any manner except to the extent required by law and may be deposited under such general conditions as may be prescribed by law in the general banking department of the Trustee and the Trustee shall not be liable for any interest thereon.

6.2. *Reliance on Writing.* The Trustee shall not be liable to the Settlor and shall be within such standard of care in acting upon any writing, including but not limited to certificates of officers, letters, telegrams, radiograms and cablegrams and in assuming the truth and correctness of any statement, opinion or assertion of any nature therein; *provided*, that any such writing is believed by the Trustee to be genuine and to have been sent by the party or parties, including their counsel and agents, whose name or names appear thereon.

6.3. *Use of Agents.* The Trustee may exercise its powers and perform its duties by or through such attorneys, agents and servants as it shall appoint; and it shall be entitled to the advice of counsel and shall be protected by the advice of such counsel in anything done or omitted to be done in accordance with such advice.

6.4. *No Duties of Maintenance, Insurance, Etc.* The Trustee shall not be liable to anyone for any defect in, or for the condition, existence, location, repair, insurance or maintenance of, any property at any time constituting part of the Trust Estate, or for any defect in title thereto; and nothing contained herein or in the Operative Documents, or in any report of documents furnished by the Trustee to the Settlor shall be construed as a representation or warranty on the part of the Trustee in respect thereof or in respect to the value thereof, or in respect to the title thereto or the sufficiency, validity or effect of the Operative Documents or this Trust Agreement. Without limiting the foregoing or any of the provisions of Section 6.2 hereof, the Trustee shall not be required to obtain opinions of title in respect of the Equipment; and in respect of all Equipment the Trustee shall be fully protected in relying, as to the title to such Equipment and the existence or non-existence of liens thereon, upon the relevant bills of sale, invoices or other documents presented to it by or through the Manufacturers of the Equipment. If such bills of sale, invoices or other documents do not expressly disclose the existence of any liens, the Trustee shall be fully protected in acting and relying on the non-existence of such liens. In making disbursements of funds received from the Settlor for the purpose of paying the cost of the Equipment, the Trustee shall be fully protected in acting and relying upon the relevant bills of sale, invoices and other documents unless and to the extent that specific directions to the contrary are given to the Trustee by the Settlor coincidentally with the furnishing of such funds.

SECTION 7. *Effect of Sales by Trustee.* Any sale of all or any part of the Trust Estate by the Trustee hereunder shall bind the Settlor and shall be effective for the benefit of the purchasers and their respective successors and assigns to divest and transfer all right, title and interest vested in the Trustee

or in the property so sold and no purchaser shall be required to inquire as to compliance by the Trustee with any of the terms hereof or to see to the application of any purchase money therefor.

SECTION 8. *Successor Trustee and Agent.*

8.1. *Resignation or Removal of Trustee.* The Trustee or any successor Trustee may resign at any time without cause by giving at least 30 days' prior written notice to the Lender and the Settlor, such resignation to be effective on the date specified in such notice. In addition, the Settlor may at any time remove the Trustee without cause by an instrument in writing delivered to the Trustee and the Lender. In case of the resignation or removal of the Trustee, the Settlor may, with the prior written consent of the holders of 75% of the principal amount of the Notes outstanding (or, if no Notes have yet been issued, with the prior written consent of the Lender), appoint a successor Trustee by an instrument signed by the Settlor. If a successor Trustee shall not have been appointed within 30 days after such resignation or removal, the Lender may apply to any court of competent jurisdiction to appoint a successor Trustee to act until such time, if any, as a successor shall have been appointed as above provided. The successor Trustee so appointed by such court shall immediately and without further act be superseded by any successor Trustee appointed as above provided within one year from the date of the appointment by such court.

8.2. *Estates and Rights of Successor Trustee.* Any successor Trustee, whether appointed by a court or by the Settlor, shall execute and deliver to the predecessor Trustee an instrument accepting such appointment, and thereupon such successor Trustee, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Trustee in the trusts hereunder with like effect as if originally named as a Trustee herein; but nevertheless upon the written request of such successor Trustee, such predecessor Trustee shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of such predecessor Trustee, and such predecessor Trustee shall duly assign, transfer, deliver and pay over to such successor Trustee any property or monies then held by such predecessor Trustee upon the trusts herein expressed.

8.3. *Qualifications of Successor Trustee.* Any successor Trustee, however appointed, shall be a bank or trust company having its principal place of business in the Borough of Manhattan, City and State of New York, and having a combined capital and surplus of at least \$50,000,000, if there be such an institution willing, able and legally qualified to perform the duties of the Trustee hereunder upon reasonable or customary terms.

8.4. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation to which substantially all the business of the Trustee may be transferred, shall, subject to the terms of Section 8.3 hereof, be the Trustee under this Trust Agreement without further act.

SECTION 9. *Termination of and Amendments to Trust.*

9.1. *Termination.* The Trust created and provided for hereby shall cease and be terminated in any one of the following events, whichever shall first occur:

(a) if the Settlor shall by notice in writing to the Trustee and the Lender revoke and terminate the Trust on and as of any date stated in such notice, which date shall not be less than ten days nor more than thirty days from the date of mailing such notice, then on the date specified in such notice the Trust created and provided for hereby shall cease and terminate, or

(b) twenty-one years less one day after the death of the survivor of Richard M. Nixon and Spiro T. Agnew and all of his now living descendants, or

(c) the sale or other final disposition by the Trustee of all property constituting the Trust Estate and the final disposition by the Trustee of all monies or other property or proceeds constituting part of the Trust Estate in accordance with the terms hereof.

9.2. *Distribution of Trust Estate Upon Termination.* Upon any termination of this Trust pursuant to the provisions of Section 9.1(a) or 9.1(b) hereof, the Trustee shall transfer title to the Trust Estate to the Settlor and upon making such transfer and accounting for all funds which have come into its hands the Trustee shall be discharged and free of any further liability hereunder.

9.3. *Amendments to This Trust Agreement and Other Documents.* This Trust Agreement and the Operative Documents may, from time to time and at any time with the prior written consent of each of the holders of a Note (or, if no Notes have yet been issued, with the prior written consent of the Lender) be amended or supplemented by an instrument or instruments in writing executed by the Trustee and the Settlor in the case of any amendment to the Trust Agreement, or by the Trustee and the Lessee in the case of amendments to the Lease or by the Trustee and the Lender in the case of amendments to the Loan Agreement, the Notes or the Security Agreement; *provided, however,* that no such

amendment or supplement shall extend the maximum term of this Trust as provided for by Section 9.1 hereof.

SECTION 10. *Compensation.* The Trustee shall receive reasonable compensation for its services hereunder and to secure payment of the same and of the indemnities of the Settlor to the Trustee set forth in this Agreement, shall have a lien on the Trust Estate prior to any interest therein of the Settlor.

SECTION 11. *Miscellaneous.*

11.1. *Notices.* All notices and communications provided for herein shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States mail, registered, postage prepaid, addressed as follows:

| | |
|--------------------|----------------------------------------------------------------------------------------------------------------------------|
| If to the Trustee: | Bankers Trust Company 16 Wall Street, New York, New York 10015 <i>Attention:</i> Corporate Trust Division |
| If to the Settlor: | Industrial Leasing Corporation 111 Westminister Street Providence, Rhode Island 02903 <i>Attention:</i> President |

or as to any of the foregoing parties at such other address as such party may designate by notice duly given in accordance with this Section to the other parties.

11.2. *Situs of Trust; Applicable Law.* This Trust has been accepted by the Trustee and will be administered in the State of New York, and the validity, construction and all rights under this Trust shall be governed by the laws of that State. If any provision of this Trust shall be invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective, provided that such remaining provisions do not increase the obligations or liabilities of the Trustee. The Trustee will provide the Settlor with an opinion of New York counsel, in form and content satisfactory to the Settlor, to the effect that this Trust is valid and enforceable in accordance with its terms.

11.3. *Identification of Trust.* This Trust may for convenience be referred to as the "U. C. Trust No. 3".

11.4. *Counterparts.* This instrument may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute and be one and the same instrument.

11.5. *Benefit of Parties and Lessee.* This instrument shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and the obligations of the Settlor under Section 3 hereof shall inure also to the benefit of the Lessee. Settlor agrees for the benefit of the Lessee not to create, incur, assume or suffer to exist any lien on the Trust Estate (other than the lien of the Security Agreement, the lien of the Trustee described in Section 10 hereof and liens which the Trustee has agreed to discharge in Section 6.1 hereof).

11.6. *Representations and Warranties.* Settlor represents, warrants and covenants that: (i) its interest in and to this Trust Agreement is being acquired for its own account for investment and not with a view to the distribution thereof or with any present intention of selling the same, provided that the disposition of such interest by it shall at all time be within its control, and as of the date of the execution and delivery of the Loan Agreement, (ii) neither it nor anyone acting on its behalf shall have directly or indirectly offered such interest or any Note, or any similar securities, for sale to, or solicited any offer to acquire any of the same from, anyone other than the Lender and such number of other institutional investors as Settlor shall have specified to special counsel for Lessor, Lessee and the Lender by separate letter.

IN WITNESS WHEREOF, the Settlor and the Trustee have caused this instrument to be duly executed the day and year first above written.

INDUSTRIAL LEASING CORPORATION

By _____
Title:

BANKERS TRUST COMPANY, *as Trustee*

By _____
Title: